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man, which would elevate him above the position of fellow-servant with the workmen.

3. INSTRUCTIONS—*Relevant to evidence—Harmless error.* Instructions must be read and construed in the light of the evidence to which they are addressed, and if, when so considered, it appears that the jury could not have been misled or deceived by them, the judgment should not be reversed, though as abstract propositions they may not accurately state the law.

4. PERSONAL INJURIES—*Declaration—Ignorance of danger—Contributory negligence.* In an action to recover damages for personal injuries the declaration need not allege the plaintiff's ignorance of the danger to which he was exposed. This is in effect an averment that he was not guilty of contributory negligence. Contributory negligence is matter of defence and need not be negated by the plaintiff in his declaration.

COMMONWEALTH v. MYER, Decided at Richmond, January 16, 1896.—*Keith, P.*

1. LICENSE TAX—*Peddlers—Interstate commerce—Discrimination in favor of citizens of the state—Sec. 32, ch. 244, Acts 1889-90 unconstitutional and void.* The State of Virginia has the right to impose a tax on peddlers where it operates uniformly upon all citizens, and does not discriminate in favor of citizens of this State and against citizens of other States, or where the tax imposed is in the exercise of police power and not a regulation of commerce under cover of that power, although incidentally it may have that effect; but where any injurious discrimination is made in favor of the resident against the non-resident, or with respect to the sales of articles manufactured in this State over similar articles manufactured abroad, the law is repugnant to the Constitution of the United States and therefore void. Applying these principles to section 32 of Chapter 244, Public Acts, 1889-90, page 197, the said section is void, because it injuriously discriminates against the products of other States and the rights of other citizens, and is an attempt to fetter commerce among the States, and deprives the citizens of other States of the privileges and immunities possessed by the citizens of this State.

FITCH v. COMMONWEALTH. — Decided at Richmond, February 6, 1896.—*Riely, J.*

1. CRIMINAL PLEADING—*Plea to jurisdiction—Venue—Burden of proof.* A plea in abatement based on the ground that the offence, if committed at all, was committed beyond the jurisdiction of the court is not admissible. That is matter of defence under the general issue of "not guilty." The burden is on the Commonwealth to prove that the offence was committed within the jurisdiction of the trial court.

2. PERJURY—*Indictment—Averment of jurisdiction over case in which perjury committed.* An indictment for perjury which states the substance of the offence, in what court the oath was administered which is charged to have been falsely taken, and avers that the court had authority to administer the same, contains the only averments necessary as to the jurisdiction of the court over the case upon the trial of

which the perjury is alleged to have been committed. Section 3993 Code. *Pickering's Case*, 8 Gratt. 628, *disapproved*.

3. PERJURY—*Indictment—Materiality of false testimony.* It should appear on the face of an indictment for perjury that the false testimony was material to the matter in issue, but it is not necessary to set forth all the circumstances which render it material. Its materiality may be expressly averred, or the facts which show its materiality may be set out in the indictment.

4. PERJURY—*Indictment—Need not charge that defendant swore positively.* In an indictment for perjury it is not necessary to aver that the defendant swore *positively and absolutely*. It is sufficient where one swears as he believes, thinks, or remembers to negative the fact that he so believed, thought or remembered.

5. PERJURY—*Indictment—What must be charged—"Falsely."* In an indictment for perjury it is indispensably necessary to charge that the defendant swore *falsely*. Falsity is the main ingredient of the crime. Under the statute (Sec. 3741 Code) it is necessary to charge that the defendant feloniously and wilfully swore falsely, or that he feloniously, wilfully, and falsely swore, or to use in the place of the word *wilful* some word that is its equivalent. An indictment for perjury is not sufficient which simply charges that the defendant did "feloniously, wilfully and corruptly depose, swear and testify," although it concludes whereby the defendant "did then and there upon the said trial in the city aforesaid feloniously, wilfully, and corruptly swear falsely and feloniously commit wilful perjury." The latter words are but the averment of a legal inference from what had been stated.

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STANLEY AND OTHERS v. STANLEY'S ADM'R AND OTHERS.—Decided at Richmond, February 6, 1896.—*Harrison, J.*: (Absent, *Cardwell, J.*)

1. WILLS—*Construction of—Bequest to A for life, remainder to A's children.* A testator, by his will, says: I give and bequeath "to Mary L. Stanley the interest that may accrue on one-fourth part of my money, bonds and security that I may die possessed of, during the period of her natural life, and at her death I give and bequeath this one-fourth part of my money, bonds and securities, from which the said Mary L. Stanley is to derive the accruing interest for her life, to the children of Mary L. Stanley, to be equally divided."

*Held*: The children *living at the death of the testator* take remainders in the principal, after the death of Mary L. Stanley, in absolute estate, share and share alike, and upon the death of any of them in the lifetime of the life-tenant the share of the deceased child passes to his or her personal representative for the payment of debts, and for distribution.